

May 27th, 2021

Shoalwater Bay Indian Tribe Attn: Holly Blake 2373 Tokeland Rd. Tokeland, WA 98590

RE:

SSDP Conditional Use, Application No. P2100243- APPROVED Tax Parcel ID No.: 14110150002, 14111250007 & 14100755397

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the May 5th, 2021 hearing to approve the above referenced application. Enclosed you will find a copy of the decision that includes the Findings of Fact and Conclusions of Law. The complete case file is available for review Monday through Thursday, 7:30 a.m. - 12:00 p.m. / 1:00 p.m. – 3:00 p.m., at our Long Beach office. Please contact me to set up an appointment to ensure that we are able to assist you.

The Hearings Examiner decision is final and conclusive unless an appeal is filed in accordance with RCW 36.70C. If no appeal is filed within the 21-day appeal period, the project is allowed to proceed once all other permits have been obtained.

The enclosed invoice is a result of the hearing as determined by the Hearing Examiner. If you have permits pending as a result of this hearing, they cannot be issued until the balance is paid. Any outstanding balance will be forwarded to collections if not paid within 30 days from the date listed above.

If you have any questions, please do not hesitate to contact me at 360-642-9382 or via email zjohnson@co.pacific.wa.us.

Sincerely,

Zane Johnson

Planner Enclosure

c: Parties of Record Parcel File



BUILDING . ENVIRONMENTAL HEALTH . PLANNING

INVOICE

Tax ID # 91-6001356

Invoice # 1184 (Please refer to this number on your check) DATE: 5/26/2021 TO: SHOALWATER BAY INDIAN TRIBE **PURCHASE ORDER NO:** PARCEL NO/PROJECT: 14110150002/GHOST DIKE - SSD CONDITIONAL USE ITEM DESCRIPTION: AMOUNT: P2100243 HEARINGS EXAMINER \$330.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00

TOTAL AMOUNT DUE:

\$330.00

\$0.00 \$0.00 \$0.00 \$0.00 \$0.00

Upon receipt of this invoice, please remit the total amount due to the

SOUTH BEND

address as shown below:

Pacific County Hearing Examiner's Decision

Permit application: P2100243



Subject property: Parcels # 14110150002, 14111250007, and 14100755397, located in Sections 1 and 12 Township 14 North, Range 11 West, W.M., on Kindred Island near Tokeland, Pacific County

Applicant: Shoalwater Bay Tribe

Hearing: May 5, 2021, 1216 West Robert Bush Drive, South Bend, Washington, and over the internet via a Zoom meeting.

Witnesses:

Zane Johnson, Planner, Pacific County Department of Community Development (Henceforth, "County" and "DCD")

Brent Haddaway, Project Manager and Consultant to the Shoalwater Bay Tribe.

Physical Evidence

DCD application packet, including application and related documents. Shoalwater Bay Indian Tribe Ghost Dike Advanced Mitigation Project report prepared by Cascade Environmental Group, March 2021

Summary of Application and Testimony

This is an application by the Shoalwater Bay Tribe for a substantial shoreline development conditional use permit to allow a wetland mitigation project by remediating an associated wetland of Willapa Bay. Their ultimate goal is to create a wetland mitigation bank that could be used to mitigate future wetland impacts.

Zane Johnson's testimony summarized and adopted his written report. Brent Haddaway testified that there would be no engineering manipulations to this ecosystem. He said that this project would also be reviewed by the United States Army Corps of Engineers and Washington State Department of Ecology and Washington State Department of Fish and Wildlife. He said it was also subject to a full cultural resources review by both the Shoalwater Bay Tribe and Washington State Department of Archaeology and Historic Preservation. He said that they set a high bar for insuring no damage to the environment. He summarized the project as using the existing dike material to fill ditches and to convert the two breaches in the dike into 15 other channels. This would prevent tidal scouring of the soil and encourage the natural reformation of the wetland. He referred to the project manual for more information.

The Mitigation Site Plans and Design, page 13 of this report, stated Overall, the mitigation approach is to remove artificial features by grading the Ghost Dike and borrow ditch to match surrounding marsh plain elevations, excavate tidal channels that have been obscured or eliminated by past land practices, and restore native plant populations. Woody material removed from the dike will be placed as habitat features and to provide wave break protection of graded areas. . . .

Construction of the AWMS will require activities to occur outside the mitigation site boundary in three locations: 1) a segment of the borrow ditch that occurs along the functioning dike will be temporarily filled to prevent site drainage and to protect the lower slopes of the functioning dike from wave erosion (the fill material will then be removed as a component of the future mitigation Bank project); 2) an upland borrow source southeast of the AWMS boundary may be used to fill all ditches within the AWMS; and 3) invasive plant species removed from the AWMS will be disposed of in an upland portion of the adjacent Bank site and allowed to decompose. No wetlands will be adversely affected by these offsite actions, and they are referenced below as they directly pertain to construction of the mitigation project construction; these areas are described in the AWMS wetland delineation report and will be included within the construction permit application.

Findings of Fact

The subject property is on Kindred Island in the Willapa Bay, owned by the Shoalwater Bay Tribe. The site is 20.32 acres. Of this, they will use .66 acre to accumulate soil to fill a ditch outside the property. The Shoalwater Bay Tribe will stage construction on a 1.28 acre parcel that they own. The project will impact about 4.52 acres of tidal water, below mean higher high water (MHHW), to fill borrow ditches and incise drainage channels along the project boundary. The goal is to recreate the marsh plain and tidal channel habitat types that existed before the failed dike was installed.

The project site is within the Willapa Bay Estuary Environment designation and the Willapa Bay Conservancy designation under the Pacific County Shoreline Master Program.

Conclusions of Law

This hearings examiner has jurisdiction over the petition. Pacific County Ordinance 177 §3 sets applications for Shoreline Master Program conditional use permits as a Type III process.

The property of this permit application is on an island in Willapa Bay thus making it subject to Pacific County Ordinance 183, the Shoreline Master Program. Ordinance 183 §3.2.F defines this particular area as within the Willapa Bay Conservancy. Section 5.1 sets a matrix table of various modifications to the various Shoreline Environment Designation regions. The proposal asks to restore and enhance, which is a permitted use and would not need a conditional use permit. However, this restoration and enhancement will be achieved by fill and excavation. By this table, where fill and excavation intersects the Willapa Bay Conservancy, the modification requires a conditional use permit.

Ordinance 183 §8.5.B states, "Before any conditional use permit is granted, all applicable criteria listed in WAC 173-27-160, as amended, must be satisfied."

WAC 173-27-160 states,

- (1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;"

RCW 90.58.020 states,

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.

Remediation of this wetland is a reasonable appropriate use of the shoreline property. Its maintenance is a reasonable appropriate use. The proposed excavation and fill is a reasonable and appropriate activity to achieve the goal of a healthier ecological, geologic, and hydrologic environment in this wetland.

RCW 90.58.020, continued,

This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance.

The proposed excavation and fill is in the public interest. The Shoalwater Bay Tribe's mission is in the public interest. The fill and excavation will remediate the historic negative impacts on the shoreline ecology and furthers the goal of protecting the land and its vegetation and wildlife, and the waters of the state and its aquatic life.

RCW 90.58.020, continued,

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

The proposed conditional use permit would allow the Shoalwater Bay Tribe to correct the damage to the natural environment and would request no alteration of the natural condition of the shoreline.

RCW 90.58.020, continued,

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The proposed remediation project will impact surrounding areas but the net effect will be to fix the damage that has already occurred to this shoreline. There will be no interference with the public's use of the water.

WAC 173-27-160 continues.

- (1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
- (b) That the proposed use will not interfere with the normal public use of public shorelines;

The proposed excavation and fill will not interfere with the normal public use of public shorelines. The project site is entirely owned by the Shoalwater Bay Tribe with no access or use by the public except as granted by the owner.

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

The conditional use permit requested by the Shoalwater Bay Tribe is entirely compatible with all authorized uses within the area. There was no evidence of any other planned use that would impact this petition or project.

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located;

The Shoalwater Bay Tribe requests the ability to excavate and fill parts of its island to restore it to the condition it enjoyed before development. There has been no evidence of any potential damage to the shoreline environment by this action. There is no evidence of any critical wildlife habitat in the affected area. This project will also require review by the US Army Corps of Engineers and the Washington State Department of Ecology and Department of Fish and Wildlife – state entities better suited to evaluate potential adverse effects to the shoreline environment.

and, (e) That the public interest suffers no substantial detrimental effect.

There has been no evidence that the public interest would suffer any substantial detrimental effect.

WAC 173-27-160 concludes.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

There has been no evidence that there would be any negative cumulative impact of additional requests for like action. Even if every degraded shoreline property along Willapa Bay were similarly remediated there would be no negative cumulative impact.

All findings of fact that are also conclusions of law shall be treated as such. All conclusions of law that are findings of fact shall be treated as such.

Conclusion

The applicants have proven by clear, cogent and convincing evidence that they have complied with the criteria established by Ordinance 183 (Shoreline Master Program) and WAC 173-27-160. The application for a conditional use permit to

allow excavation and fill, and all associated activities as described in the report to remediate this wetland is approved subject to the following conditions:

The project shall remain consistent will all of the SMP sections outlined in the DCD report and with its description in the Cascade Environmental Group report.

All other state and federal permitting shall be completed prior to initiating the project.

Any and all future development on the subject property requires permit approval from Pacific County.

Pacific County may revoke this permit if permittee fails to comply with the conditions listed.

The granting of this permit has no effect on whether the subject property would qualify as a wetland mitigation bank or on any other use or activity.

The permit shall not begin and is not authorized until at least 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-24-130, as amended, or until all review proceedings initiated within 21 days from the date of such filings have been terminated, except as provided in RCW 90.58.140(5)(c) and (d).

Please note that any appeal of this decision shall comply with the requirements of RCW 36.70C. The deadline for filing any appeal is both swift and definite. If you have any questions concerning this strict deadline or the appeals process, please consult an attorney.

Signed this 25th day of May, 2021.

Eric Weston, Hearings Examiner